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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ADRIAN MORENO,

Defendant and Appellant.

H045944

(Monterey County
Super. Ct. No. 18CR003229)

Defendant Adrian Moreno pleaded no contest to attempted second degree robbery. As part of the plea agreement, he entered a broad waiver of his appellate rights. The trial court placed defendant on three years' formal probation as called for by the plea agreement. On appeal, defendant's counsel filed an opening brief in which no issues are raised and asked this court to independently review the record under *People v. Wende* (1979) 25 Cal.3d 436. We sent a letter to defendant notifying him of his right to submit a written argument on his own behalf on appeal. He has not done so.

Finding no cognizable, arguable appellate issue, we affirm. We will provide "a brief description of the facts and procedural history of the case, the crimes of which the defendant was convicted, and the punishment imposed," as required by *People v. Kelly* (2006) 40 Cal.4th 106, 110. We will further include information about aspects of the trial court proceedings that might become relevant in future proceedings. (*Ibid.*)

I. FACTUAL AND PROCEDURAL BACKGROUND¹

In the early morning hours on March 31, 2018, defendant—then 19 years old—took two cases of beer from a Salinas grocery store without paying for them. An employee followed defendant out of the store and tackled him. Three other individuals were waiting in a vehicle for defendant. One of those individuals threw a beer bottle at the employee, but missed. Defendant hit the employee in the back of the head with brass knuckles before fleeing in the vehicle with his companions. When officers arrived, they found the employee bleeding from a five-inch-long cut on the back of the head. Later that day, officers took defendant and his companions into custody after a lengthy pursuit. At the time of booking, defendant stated that he was an active Norteño gang member.

On April 2, 2018, the Monterey County District Attorney charged defendant with first degree residential robbery. (Pen. Code, § 211.)² Defendant agreed to plead no contest to the lesser included offense of attempted second degree robbery (§§ 664, 211) on the condition that he receive felony probation and in exchange for the dismissal of three other cases. On May 29, 2018, defendant entered a plea of no contest to attempted second degree robbery. As part of his plea agreement, defendant waived “all rights regarding state and federal writs and appeals,” “includ[ing], but . . . not limited to, the right to appeal [his] conviction, the judgment, and any other orders previously issued by this court.” Defendant further agreed “not to file any collateral attacks on [his] conviction or sentence at any time in the future.”

During a June 6, 2018 interview, defendant told a probation officer that he had used cocaine and been drinking to the point of being drunk prior to the offense. He expressed remorse for his actions and said he made a mistake by hanging out with “the homies” for the night. Defendant admitted to ongoing use of cocaine from age 13 to 17, ongoing use of marijuana from age 14 to 19, and ongoing use of methamphetamine from

¹ The facts are taken from the probation officer’s report.

² All further statutory references are to the Penal Code unless otherwise indicated.

age 16 to 19. Defendant also informed the probation officer that he had been diagnosed with ADHD and Tourette's and that he was taking 0.3mg of Clonidine three times a day.

The court sentenced defendant on June 26, 2018. As called for by the plea agreement, the court suspended imposition of sentence and placed defendant on formal probation for three years subject to various conditions. Among the probation conditions imposed were gang conditions³, a condition that defendant serve 173 days in County Jail, and a condition that defendant "[t]ake all psychotropic medications in the manner and dosage prescribed by [his] healthcare professional." The court awarded defendant a total of 173 days of presentence credits, consisting of 87 days of actual custody and 86 days of conduct credits.

The court imposed the following fines and fees: a \$300 restitution fine (§ 1202.4, subd. (b)(1)) with an additional \$300 probation revocation fine, which was suspended pending successful completion of probation (§ 1202.44); a \$40 court operations assessment fee (§ 1465.8, subd. (a)(1)); a \$30 court facilities assessment fee (Gov. Code, § 70373); and a \$10 local crime prevention fine (§ 1202.5, subd. (a)) plus penalty assessments for a total of \$41. The court also ordered defendant to pay an unspecified criminal justice administration fee "if and as directed by the arresting agency" "in accordance with his/her ability to pay." (Gov. Code, §§ 29550.1, 29550.2.) And the court ordered defendant to pay "\$864.00 for the cost of preparation of the probation report plus \$81.00 per month as the cost of supervised probation in accordance with his/her ability to pay" (§ 1203.1b), and to provide his probation officer with financial information for evaluation of his ability to pay. Defendant did not object to any of the fines or fees.

Finally, the court dismissed three other cases against defendant.

³ Defense counsel objected to the gang conditions, arguing there was no nexus to the case. The court overruled that objection.

Defendant timely filed a notice of appeal. He did not obtain a certificate of probable cause from the trial court.

II. DISCUSSION

We requested supplemental briefing from the parties as to whether the trial court erred in imposing a \$10 local crime prevention fine (§ 1202.5, subd. (a)) and \$31 in associated penalty assessments, given that “*attempted* robbery is not among the enumerated offenses for which a local crime prevention programs fine may be imposed.” (*People v. Jefferson* (2016) 248 Cal.App.4th 660, 663.) The Attorney General filed a supplemental brief arguing that the appeal should be dismissed because defendant waived his appellate rights as part of his negotiated plea and any challenge to that waiver fails for lack of a certificate of probable cause. Defendant contends his appeal is cognizable because there are aspects of his sentence, including the local crime prevention fine, as to which his plea agreement was silent that are, thus, not covered by the waiver.

“[A] defendant [may] waive the right to appeal as part of [a negotiated plea] agreement.” (*People v. Panizzon* (1996) 13 Cal.4th 68, 80 (*Panizzon*).) Where such a waiver “is nonspecific, e.g., ‘I waive my appeal rights’ or ‘I waive my right to appeal any ruling in this case,’ ” it is considered a general waiver of the right to appeal. (*Id.* at p. 85, fn. 11.) Such a general waiver “will not be construed to bar the appeal of sentencing errors occurring subsequent to the plea” and involving “sentencing issues that were left *unresolved* by the particular plea agreement[] involved.” (*Id.* at p. 85.) However, an appellate waiver will be construed to bar the appeal of sentencing errors where “the plea agreement . . . specif[ied] the sentence to be imposed” and “the waiver of appellate rights . . . specifically extended to any right to appeal such sentence.” (*Id.* at pp. 85-86.)

Here, defendant waived “all rights regarding state and federal writs and appeals,” “includ[ing], but . . . not limited to, the right to appeal . . . the judgment” That appellate waiver is extremely comprehensive and, in our view, encompasses defendant’s right to appeal the imposition of the local crime prevention fine in the order of probation.

(See § 1237 [“an order granting probation . . . shall be deemed to be a final judgment” for purposes of taking an appeal].)

Defendant might be able to argue that he did not knowingly and intelligently waive the right to challenge the fine because the possibility that the court would impose an unauthorized fine was not contemplated at the time of the waiver. (See *People v. Espinoza* (2018) 22 Cal.App.5th 794, 801 [“We recognize that, as a general principle, defendants cannot knowingly and intelligently waive the right to appeal an issue that was not contemplated at the time of the waiver”].) But such a challenge to the validity of the waiver would constitute a challenge to the validity of the plea in which that waiver appears. (*Id.* at p. 802; *People v. Buttram* (2003) 30 Cal.4th 773, 793 (*Buttram*) (conc. opn. of Baxter, J.) [“An attempt to appeal the *enforceability* of the *appellate waiver itself* (for example, on grounds that it was not knowing, voluntary, and intelligent, or had been induced by counsel’s ineffective assistance) . . . would manifestly constitute an *attack on the plea’s validity*”].) And defendant cannot challenge the validity of the plea absent a certificate of probable cause. (§ 1237.5; *Panizzon, supra*, 13 Cal.4th at p. 76 [“It has long been established that issues going to the validity of a plea require compliance with section 1237.5.”]; *Buttram, supra*, p. 793 (conc. opn. of Baxter, J.) [certificate of probable cause would be required to appeal the enforceability of an appellate waiver set forth in a plea agreement].)

In sum, the broad appellate waiver to which defendant agreed as part of his plea agreement bars review of the local crime prevention fine. And defendant’s failure to obtain a certificate of probable cause bars review of any challenge to the validity of the appellate waiver. Furthermore, having examined the entire record, we have not identified any other cognizable, arguable issue for reversal on appeal.

III. DISPOSITION

The order of probation is affirmed.

ELIA, ACTING P. J.

WE CONCUR:

BAMATTRE-MANOUKIAN, J.

MIHARA, J.